

Motion and Order for Admission *Pro Hac Vice*

Division	Select the Division	Case Number	22-cv-2778
Patrick Nathaniel Reed			
<i>versus</i>			
Brandel Eugene Chamblee, et al			

Lawyer's Name Firm Street City & Zip Code Telephone & Email Licensed: State & Number Federal Bar & Number	Larry Klayman, Esq. Klayman Law Group P.A. 7050 W. Palmetto Park Rd Boca Raton, FL, 33433 561-558-5336; leklayman@gmail.com Florida, 246220 U.S. District Court for the Northern District of Texas, 334581DC
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Name of party applicant seeks to appear for:	Plaintiff Patrick Nathaniel Reed
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Has applicant been sanctioned by any bar association or court? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
On a separate sheet for each sanction, please supply the full particulars.

Dated: 8/19/2022	Signed: /s/ Larry Klayman
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The state bar reports that the applicant's status is:	
Dated:	Clerk's signature

Order

This lawyer is admitted *pro hac vice*.

Dated: _____

United States District Judge

ADDENDUM TO APPLICATION FOR ADMISSION

I have been a member continuously in good standing of The Florida Bar since December 7, 1977, when I began the practice of law as an associate with the Miami litigation firm of Blackwell, Walker, Powers, Flick and Hoehl. I was also a candidate for the U.S. Senate in Florida in 2003-2004 in the Republican primary.

During this time period of 44 years, I agreed to a reprimand with The Florida Bar in 2011, and no finding of dishonesty was made by the The Florida Bar and the Florida Supreme Court. The issue involved a fee dispute with the client, Natalia Humm, which was settled, but when the 2008 recession hit I could not pay the settlement back in the time agreed to, as I faced the possibility of bankruptcy. To avoid further litigation, I agreed with the bar to settle the matter and move on with my life. *See* Attachment. I have continuously been a member in good standing of The Florida Bar since December 7, 1977, that is almost 45 years. *See* attached Certificate of Good Standing of The Florida Bar.

Many years later, I was later suspended for 3 months by a very partisan District of Columbia Bar, disciplinary apparatus. The suspension occurred from August 12, 2020 to December 10, 2020 and is now concluded. There was no finding that I had acted dishonestly and the matter involved an alleged conflict of interest, which the prominent legal ethics expert, Professor Ronald Rotunda, had opined was not present. *See* attached Opinion of Professor Ronald Rotunda, who provided it pro bono. Before this matter concluded, it went on for twelve years, a duration that based on Florida legal precedent would not be acceptable in my home state. This action would at a minimum have been subject to a statute of limitations, or at a minimum, laches in Texas. *See Gamez v. State Bar of Tex.*, 765 S.W.2d 827, 833 (Tex. App.—San Antonio 1988, writ denied). In any event, the District of Columbia Court of Appeals made the explicit finding that:

... we are not left with “[s]erious doubt” or “real skepticism” that Mr. Klayman can practice ethically.... Accordingly, we decline to impose a fitness requirement. *In re Klayman*, 228 A.3d 713, 719 (D.C. 2020). *See* Attachment.

Finally, I am attaching Certificates of Good Standing from the U.S. District Court for the Northern District of Texas, where I have been a member for many years, as well as the U.S. Court of Appeals for the Fifth Circuit. I am also a member in good standing with the U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court, as well the U.S. District Courts for the Southern, Middle and Northern Districts of Florida.

ABOUT LARRY KLAYMAN

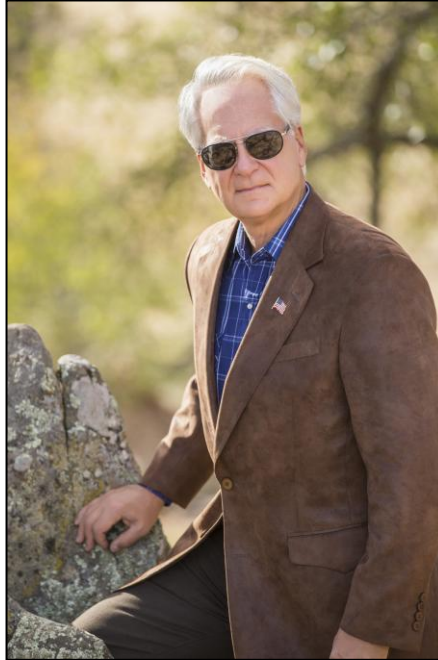
Larry Klayman, founder of Judicial Watch and Freedom Watch, is known for his strong public interest advocacy in furtherance of ethics in government and individual freedoms and liberties. During his tenure at Judicial Watch, he obtained a court ruling that Bill Clinton committed a crime, the first lawyer ever to have done so against an American president. Larry became so famous for fighting corruption in the government and the legal profession that the NBC hit drama series "West Wing" created a character after him: [Harry Klaypool of Freedom Watch](#). His character was played by actor John Diehl.

In 2004, Larry ran for the U.S. Senate as a Republican in Florida's primary. After the race ended, he founded Freedom Watch.

Larry graduated from Duke University with honors in political science and French literature. Later, he received a law degree from Emory University. During the administration of President Ronald Reagan, Larry was a Justice Department prosecutor and was on the trial team that succeeded in breaking up the telephone monopoly of AT&T, thereby creating competition in the telecommunications industry.

Between Duke and Emory, Larry worked for U.S. Senator Richard Schweiker (R-Pa.) during the Watergate era. He has also studied abroad and was a stagiaire for the Commission

of the European Union in its Competition Directorate in Brussels, Belgium. During law school, Larry also worked for the U.S. International Trade Commission in Washington, D.C.



Larry speaks four languages—English, French, Italian, and Spanish—and is an international lawyer, among his many areas of legal expertise and practice.

The author of two books, *Fatal Neglect* and *Whores: Why and How I Came to Fight the Establishment*, Larry has a third book in the works dealing with the breakdown of our political and legal systems. His current book, *Whores*, is on

now sale at WND.com, Amazon.com, BarnesandNoble.com, Borders.com, and all major stores and booksellers.

Larry is a frequent commentator on television and radio, as well as a weekly columnist, on Friday, for WND.com. He also writes a regular blog for Newsmax called "Klayman's Court."

Larry has been credited as being the inspiration for the Tea Party movement. (See "[Larry Klayman - The One Man TEA Party](#)," by Dr. Richard Swier, <http://fwusa.org/KFA>)



**Support the work of
Freedom Watch at
www.FreedomWatchUSA.org**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CERTIFICATE OF GOOD STANDING

I, LYLE W. CAYCE, Clerk of this Court, certify that **Larry Klayman** was duly admitted to practice in this Court on June 26, 2019, and is in good standing in this Court.

Dated at NEW ORLEANS, LOUISIANA on August 19, 2022

Lyle W. Cayce

LYLE W. CAYCE
Clerk

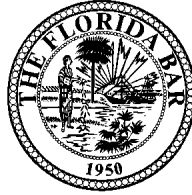


By: *Sabrina B. Short*
Sabrina B. Short
Deputy Clerk

A True Copy
Certified Aug 19, 2022

Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

State of Florida)

County of Leon)

In Re: 0246220
Larry Elliot Klayman
Klayman Law Group, PA
7050 W Palmetto Park Rd
Boca Raton, FL 33433-3426

I CERTIFY THE FOLLOWING:

I am the custodian of membership records of The Florida Bar.

Membership records of The Florida Bar indicate that The Florida Bar member listed above was admitted to practice law in the state of Florida on **December 7, 1977**.

The Florida Bar member above is an active member in good standing of The Florida Bar who is eligible to practice law in the state of Florida.

Dated this 19th day of **August, 2022**.

Cynthia B. Jackson, CFO
Administration Division
The Florida Bar

PG:R10
CTM-195366



**U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

CERTIFICATE OF GOOD STANDING

I, Karen Mitchell, Clerk of the U.S. District Court for the Northern District of Texas, certify that the attorney named below is admitted to practice before this court and is currently in good standing:

Larry E. Klayman

Bar Number:

Date of Admission:

334581DC

08/09/2002

Witness my official signature and the seal of this court.

Dated: 07/26/2022

Karen Mitchell,
Clerk of Court

By: s/ B. Hill
Deputy Clerk



2 June 2014

Board on Professional Responsibility
430 E Street, NW
Suite 138
Washington, DC 20001

RE: *In the matter of* Larry Klayman, Esq. (Bar Docket No. 2008-D048)

My name is Ronald D. Rotunda. I am the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University, The Dale E. Fowler School of Law, located in Orange, California, where I teach Professional Responsibility and Constitutional Law. I am a magna cum laude graduate of Harvard Law School, where I served as a member of the Harvard Law Review. I later clerked for Judge Walter R. Mansfield of the United States Court of Appeals for the Second Circuit.

During the course of my legal career, I have practiced law in Washington, D.C., and served as assistant majority counsel for the Senate Watergate Committee. I am the co-author of Problems and Materials on Professional Responsibility (Foundation Press, Westbury, N.Y., 12th ed. 2014), the most widely used legal ethics course book in the United States. It has been the most widely used since I coauthored the first edition in 1976. In addition, I have authored or coauthored several other books on legal ethics, including Rotunda & Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (ABA/Thompson, 11th ed. 2013).

In addition to these books, I have written numerous articles on legal ethics, as well as several books and articles on Constitutional Law, as indicated in the attached resume. State and federal courts at every level have cited my treatises and articles over 1000 times. From 1980 to 1987, I was a member of the Multistate Professional Examination Committee of the National Conference of Bar Examiners.

I have reviewed the facts of the above referenced bar complaint against Larry Klayman. It is my expert opinion that in the present situation Mr. Klayman has not committed any offense that merits discipline. In fact, he, to the best of his ability, simply pursued an obligation that he knew that he owed to Sandra Cobas, Peter Paul, and Louise Benson.

Mr. Klayman, whose organization, Judicial Watch, was once engaged as attorneys for Paul (it never was engaged for Benson or Cobas), reasonably believed he had an ethical obligation to represent them, and chose to uphold his duty to these clients. District of Columbia Rule of Professional Conduct 1.3 states that, “(a) A lawyer shall represent a client zealously and diligently within the bounds of the law.” Further, Rule 1.3(a) (comment 1) provides guidance on this issue and the duties of an attorney. “This duty requires the lawyer to pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and to take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor.”

Recall *Maples v. Thomas*, 132 S.Ct. 912 (2012). In that case, two lawyers working in the firm of Sullivan & Cromwell entered an appearance for a client. These two associates worked pro bono and sought state habeas corpus for a defendant sentenced to death. A local Alabama lawyer moved their admission pro hac vice. Later, the two associates left the firm and their “new employment disabled them from representing” the defendant (one became a prosecutor and one moved abroad). Neither associate sought the trial court’s leave to withdraw (which Alabama law required), nor found anyone else to assume the representation. Moreover, no other Sullivan & Cromwell lawyer entered an appearance, moved to substitute counsel, or otherwise notified the court of a need to change the defendant’s representation. When Mr. Klayman left Judicial Watch, no other lawyer for Judicial Watch stepped up to the plate, because in fact Judicial Watch had taken actions adverse and harmful to Paul, Benson and Cobas. No lawyer stepped up to the plate in *Maples v. Thomas*.

The issue before the U.S. Supreme Court was whether the defendant showed sufficient “cause” to excuse his procedural default. Justice Ginsburg, for the Court, acknowledged that the usual rule is that even a negligent lawyer-agent binds the defendant. Here, however, the lawyers “abandoned” the client without notice and took actions which in fact harmed them thus severing the lawyer-client relationship and ending the agency relationship. This made the failure to appeal an “extraordinary circumstance” beyond the client’s control and excused the procedural default. In the view of Mr. Klayman, he could not abandon the clients.

In applying these principles, it is reasonable and understandable that Mr. Klayman believed that had an ethical obligation, in accordance with perhaps the most important principle of this profession, to zealously and diligently represent his clients. More importantly, comment 7 observes that “[n]eglect of client matters is a serious violation of the obligation of diligence.” Note that there is no credible claim that he used any confidence of Judicial Watch against Judicial Watch.

One should also consider Mr. Klayman's actions in light of the doctrine of necessity. We know that judges can decide cases even if they are otherwise disqualified if there is no other judge available to decide the case. For example, the Court of Claims applied the “rule of necessity” and held that, under that rule, its judges could hear the case involving their own salaries. Otherwise, no judge would be available to decide some important legal questions. The court then turned to the judges’ substantive claim and denied it. *Atkins v. United States*, 556 F.2d 1028 (Ct.Cl.1977) (per curiam), cert. denied, 434 U.S. 1009 (1978). See also, *United States v. Will*, 449 U.S. 200 (1980). The *Will* Court explained: “The Rule of Necessity had its genesis at

least five-and-a-half centuries ago. Its earliest recorded invocation was in 1430, when it was held that the Chancellor of Oxford could act as judge of a case in which he was a party when there was no provision for appointment of another judge.”

Faced with the dilemma of either representing Cobra, Paul, and Benson, or allowing them to lose their legal rights, Mr. Klayman sided with the rights of the clients, in accordance with Rule 1.3, and thus, justifiably, chose to represent them. Judicial Watch attempted, and succeeded, at disqualifying Mr. Klayman from the lawsuits because it knew no one else would be able to represent Cobas, Paul, and Benson, and that Judicial Watch would escape liability for the wrongs that they had caused. The trial judge did disqualify Mr. Klayman in representing Paul in a new case after Paul’s previous lawyers withdrew representation because he could not pay them, but note that the trial judge did *not* refer this case to the disciplinary authorities for further discipline. It appears reasonable to believe that the trial judge imposed all the discipline (in the form of a disqualification) that he believed should be imposed. The situation involving these particular clients provided a unique set of circumstances, one that the D.C. Rules of Professional Conduct do not expressly take into account. Given this unprecedented situation, Mr. Klayman, out of necessity, attempted to correct the wrongs caused by Judicial Watch, so that he would not violate D.C. RPC Rule 1.3. Further establishing Mr. Klayman’s ethical intentions is the fact that he represented these aggrieved individuals pro bono and paid court and other costs out of his own pocket simply to protect the rights of Cobas, Paul, and Benson.

There has been an unusual delay in instituting these proceedings against Mr. Klayman. If this were civil litigation, Bar Counsel’s Petition would obviously not pass muster under the District of Columbia statute of limitations. The general statute of limitations for most civil causes of actions in the District of Columbia is three (3) years. D.C. Code § 12-301 *et seq.* “The purpose of statutes of limitation is ‘to bring repose and to bar efforts to enforce stale claims as to which evidence might be lost or destroyed.’” *Medhin v. Hailu*, 26 A.3d 307, 313 n.7 (D.C. 2011) citing *Hobson v. District of Columbia*, 686 A.2d 194, 198 (D.C. 1996). “By precluding stale claims, statutes of limitations not only protect against ‘major evidentiary problems which can seriously undermine the courts’ ability to determine the facts,’ but also protect[] a potential defendant’s ‘interest in security . . . and in planning for the future without the uncertainty inherent in potential liability,’ and ‘increase the likelihood that courts will resolve factual issues fairly and accurately.’” *Id.* Granted, the D.C. Rules of Professional Conduct do not expressly create a statute of limitations, the indisputable fact remains however that these proceedings — if they should have been brought at all — should have been brought years ago.

That brings up the problem of laches. The doctrine of laches bars untimely claims not otherwise barred by the statute of limitations. As held by the District of Columbia Court of Appeals, laches is the principle that “equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant. It was developed to promote diligence and accordingly to prevent the enforcement of stale claims.” *Beins v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 122, 126 (D.C. 1990). Laches applies to bar a claim when a plaintiff has unreasonably delayed in asserting a claim and there was undue prejudice to the defendant as a result of the delay. *Jeanblanc v. Oliver Carr Co.*, 1995 U.S. App. LEXIS 19995, *9 (D.C. Cir. June 21, 1995). Among the inequities that the doctrine of laches protects against is the loss of or difficulty in resurrecting pertinent evidence. *Id.*

Note that Mr. Klayman left Judicial Watch on September 19, 2003. He filed his appearance on behalf of Ms. Cobas on August 7, 2006 — long after he left Judicial Watch. There is no claim that he violated any confidences of Judicial Watch or that he earlier represented Judicial Watch against Ms. Cobas. This Bar Complaint was filed on May 1, 2014. The delay in filing the complaint was nearly 8 years.

The conduct alleged by Bar Counsel occurred between seven and eight years ago. Given the substantial delay in bringing the present Petition before the Board, Mr. Klayman's ability to defend this case has been detrimentally prejudiced, particularly as recollection and memory fade over the course of approximately seven to eight years and witnesses and the individuals involved may be unavailable in support of Mr. Klayman's defense. In Paul's case, for instance, he is in federal prison in Texas. Ms. Cobas has health problems and Ms. Benson is now an 83-year-old woman. The Bar should not use this unique factual situation to discipline Mr. Klayman given the equitable doctrine of laches. Such discipline, if the courts uphold it, can ruin his career.

This Petition also raises issues regarding the application of Mr. Klayman's Fifth Amendment due process rights. Lawyers in attorney discipline cases are entitled to procedural due process. In *Ruffalo*, the respondent appealed his disbarment after records of his employments were brought up into his disciplinary proceedings at a late stage in the proceedings without giving him the opportunity to respond. In reversing, the U.S. Supreme Court held that the attorney's lack of notice that his full employment record would be used in the proceedings caused a violation of procedural due process that "would never pass muster in any normal civil or criminal litigation." *In the Matter of John Ruffalo, Jr.*, 390 U.S. 544, 550 (1968).

In *Kelson*, the Supreme Court of California similarly held that it was a violation of procedural due process for the State Bar of California to amend its charges on the basis of Mr. Kelson's testimony without having given Mr. Kelson notice of the charge and an opportunity to respond. *Kelson v. State Bar*, 17 Cal. 3d. 1, 6 (Cal. 1976). *Kelson* is directly on point. Judicial Watch submitted boxes full of voluminous documents to the Bar Counsel's office in secret, none of which were ever served to Mr. Klayman until the Petition was filed and then served. It appears that Judicial Watch and Mr. Klayman have had a parting of the ways that has not been amicable. One can understand why, even after all these years, a former employer who is very upset might wish to use the discipline process to punish a former employee, but that does not mean that the discipline authorities should aid and abet (even unintentionally) what appears to be a vendetta by one private group against its former lawyer. Discipline, after all, exists to protect future clients and the public; it does not exist for one party to wreak punishment against another.

Further, these alleged ethical violations have already been dealt with by the Honorable Royce C. Lamberth in his Memorandum Opinion and Order in *Paul v. Judicial Watch, et al.*, No. 1:07-CV-00279 (D.D.C. filed Feb. 5, 2007). In his Memorandum Opinion, Judge Lamberth specifically addressed the issue of D.C. Bar Rule 1.9 in regard to disqualifying Mr. Klayman from continuing to represent Paul in the lawsuit. Judge Lamberth, in his ruling, found that "A survey of relevant case law in this and other circuits reveals some ambiguity with respect to the standard for disqualification in the face of a violation of Rule 1.9 (or its equivalent)." *Id.* at 6. Indeed, given the circumstances, and the harm that would be caused to Paul, it was ambiguous whether Rule 1.9 required Mr. Klayman's disqualification. Judge Lamberth took "note of Paul's

argument that he will suffer prejudice if Mr. Klayman is disqualified.” *Id.* at 14. Judge Lamberth emphasized that “[t]he essence of the hardship that Paul asserts will result from disqualification of Mr. Klayman is an inability to obtain alternate counsel for lack of financial resources” and ultimately apologetically found that “[t]he Court is not unsympathetic to this concern.” *Id.* at 14.


Immediately following Judge Lamberth’s order, Mr. Klayman ceased all legal representation of Mr. Paul. No harm was caused by the limited and short-term representation that Mr. Klayman had provided. In fact, the harm was only done when Judicial Watch ceased representation of Paul, who as a result has been convicted of the alleged crimes and has since been incarcerated. Judge Lamberth did not sanction Mr. Klayman, or even report his actions to the Bar Counsel or the Board. Judge Lamberth recognized that the D.C. RPC was not clear when disqualification was necessary under Rule 1.9 and thus took no further action.

Given the delay in instituting these proceedings, it appears that Judicial Watch has targeted Mr. Klayman for selective prosecution. Seldom in the history of the District of Columbia Bar has someone been the subject of such an investigation for such a technical violation. To prevail on a defense of selective prosecution, one must simply prove that he was singled out for prosecution among others similarly situated and that the decision to prosecute was improperly motivated. *See, e.g. United States v. Mangieri*, 694 F.2d 1270, 1273 (D.C. Cir. 1982). Here, Mr. Klayman is being investigated, and even charged, with an alleged ethical violation that otherwise would have been resolved as a result of Judge’s Lamberth’s decision to disqualify Mr. Klayman from the case.

For the foregoing reasons, it is my expert opinion that this bar complaint should not be pursued. Mr. Klayman, faced with what Judge Lamberth concluded was an “ambiguous” rule, understood that Mr. Klayman did not take on a case for personal profit but simply to protect the rights of those who could otherwise not pursue justice in the court system. Further justifying dismissal of this bar complaint is the unreasonably delay by the Office of Bar Counsel in bringing these allegations against Mr. Klayman. Mr. Klayman’s defense of these alleged ethical violations has been severely prejudiced by the length of time that has passed since the events leading up to the bar complaint took place.

In sum, Mr. Klayman should not be disciplined. He did what he believed he had an ethical obligation to do by protecting his clients, at his expense.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald D. Rotunda".

Ronald D. Rotunda
Doy & Dee Henley Chair and Distinguished Professor of
Jurisprudence

RONALD D. ROTUNDA

Email: rrotunda@chapman.edu

May 2, 2014

Home Page  <http://www1.chapman.edu/~rrotunda>

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Experience:

Since August, 2008	DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, CHAPMAN UNIVERSITY
June 17, 2009 – Jan. 31, 2013	COMMISSIONER, Fair Political Practices Commission a regulatory body of the State of California,
2006- August 2008	UNIVERSITY PROFESSOR AND PROFESSOR OF LAW, George Mason University
2002-2006	THE GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, George Mason University School of Law
Nov. to Dec. 2002	Visiting Scholar, Katholieke Universiteit Leuven, Faculty of Law, Leuven, Belgium
May 2004	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
June 2004-May 2005	Special Counsel to Department of Defense, The Pentagon
December 2005	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
1993 - 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, University of Illinois College of Law
Since 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, EMERITUS, University of Illinois College of Law
Fall, 2001	Visiting Professor, George Mason University School of Law

Spring & Fall 2000	Cato Institute, Washington, D.C.; Senior Fellow in Constitutional Studies [Senior Fellow in Constitutional Studies, 2001-2009]
Spring, 1999	Visiting Professor, holding the JOHN S. STONE ENDOWED CHAIR OF LAW, University of Alabama School of Law
August 1980 - 1992	Professor of Law, University of Illinois College of Law
March 1986	Fulbright Professor, Maracaibo and Caracas, Venezuela, under the auspices of the Embassy of the United States and the Catholic University Andres Bello
January – June, 1981	Fulbright Research Scholar, Italy
Spring 1981	Visiting Professor of Law, European University Institute, Florence, Italy
August 1977 – August, 1980	Associate Professor of Law, University of Illinois College of Law
August 1974 – August 1977	Assistant Professor of Law, University of Illinois College of Law
April 1973 - July 1974	Assistant Counsel, U.S. Senate Select Committee on Presidential Campaign Activities
July 1971 - April, 1973	Associate, Wilmer, Cutler & Pickering Washington, DC
August 1970 – July 1971	Law Clerk to Judge Walter R. Mansfield, Second Circuit, New York, N.Y.

Education:

Legal: HARVARD LAW SCHOOL (1967- 1970)
Harvard Law Review, volumes 82 & 83
J.D., 1970 Magna Cum Laude

College: HARVARD COLLEGE (1963- 1967)
A.B., 1967 Magna Cum Laude in Government

Member:

American Law Institute (since 1977); Life Fellow of the American Bar Foundation (since 1989); Life Fellow of the Illinois Bar Foundation (since 1991); The Board of Editors, The Corporation Law Review (1978-1985); New York Bar (since 1971); Washington, D.C. Bar and D.C. District Court Bar (since 1971); Illinois Bar (since 1975); 2nd Circuit Bar (since 1971); Central District of Illinois (since 1990); 7th Circuit (since 1990); U.S. Supreme Court Bar (since 1974); 4th Circuit, since 2009. Member: American Bar Association, Washington, D.C. Bar Association, Illinois State Bar

Association, Seventh Circuit Bar Association; The Multistate Professional Responsibility Examination Committee of the National Conference of Bar Examiners (1980-1987); AALS, Section on Professional Responsibility, Chairman Elect (1984-85), Chairman (1985-86); Who's Who In America (since 44th Ed.) and various other Who's Who; American Lawyer Media, L.P., National Board of Contributors (1990-2000).

Scholarly Influence and Honors:

Symposium, *Interpreting Legal Citations*, 29 JOURNAL OF LEGAL STUDIES (part 2) (U. Chicago Press, Jan. 2000), sought to determine the influence, productivity, and reputation of law professors. Under various measures, Professor Rotunda scored among the highest in the nation. *E.g.*, scholarly impact, most-cited law faculty in the United States, 17th (p. 470); reputation of judges, legal scholars, etc. on Internet, 34th (p. 331); scholar's non-scholarly reputation, 27th (p. 334); most influential legal treatises since 1978, 7th (p. 405).

In May 2000, *American Law Media*, publisher of *The American Lawyer*, the *National Law Journal*, and the *Legal Times*, picked Professor Rotunda as one of the ten most influential Illinois Lawyers. He was the only academic on the list. He was rated, in 2014, as one of "[The 30 Most Influential Constitutional Law Professors](#)" in the United States.

- 2012, Honored with, THE CHAPMAN UNIVERSITY EXCELLENCE IN SCHOLARLY/CREATIVE WORK AWARD, 2011-2012.
- Appointed UNIVERSITY PROFESSOR, 2006, George Mason University; Appointed 2008, DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, Chapman University.
- The 2002-2003 *New Educational Quality Ranking* of U.S. Law Schools (EQR) ranks Professor Rotunda as the eleventh most cited of all law faculty in the United States. See http://www.leiterrankings.com/faculty/2002faculty_impact_cites.shtml
- Selected UNIVERSITY SCHOLAR for 1996-1999, University of Illinois.
- 1989, Ross and Helen Workman Research Award.
- 1984, David C. Baum Memorial Research Award.
- 1984, National Institute for Dispute Resolution Award.
- Fall, 1980, appointed Associate, in the Center for Advanced Study, University of Illinois.

LIST OF PUBLICATIONS:

BOOKS:

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

CALIFORNIA SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

1978 SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1978) (with Thomas D. Morgan).

1979 PROBLEMS, CASES AND READINGS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

1979 CALIFORNIA RULES SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

1979 STANDARDS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

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1980 STANDARDS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1980) (with Thomas D. Morgan).

CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1978) (a one volume treatise on Constitutional Law) (with John E. Nowak and J. Nelson Young).

1978 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1978) (with John E. Nowak and J. Nelson Young).

1979-1980 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1979) (with John E. Nowak and J. Nelson Young).

1982 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1982) (with John E. Nowak and J. Nelson Young).

MODERN CONSTITUTIONAL LAW: CASES & NOTES (West Publishing Co., St. Paul, Minnesota, 1981).

1981 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1981).

1982 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1982).

1983 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1983).

1984 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, MINNESOTA, 1984).

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Other Activities:

March-April, 1984, Expert Witness for State of Nebraska on Legal Ethics at the Impeachment Trial of Nebraska Attorney General Paul L. Douglas (tried before the State Supreme Court; the first impeachment trial in nearly a century).

July 1985, Assistant Chief Counsel, State of Alaska, Senate Impeachment Inquiry of Governor William Sheffield, (presented before the Alaskan Senate).

Speaker at various ABA sponsored conferences on Legal Ethics; Speaker at AALS workshop on Legal Ethics; Speaker on ABA videotape series, "Dilemmas in Legal Ethics."

Interviewed at various times on Radio and Television shows, such as MacNeil/Lehrer News Hour, Firing Line, CNN News, CNN Burden of Proof, ABC's Nightline, National Public Radio, News Hour with Jim Lehrer, Fox News, etc.

1985--1986, Reporter for Illinois Judicial Conference, Committee on Judicial Ethics.

1981-1986, Radio commentator (weekly comments on legal issues in the news), WILL-AM Public Radio.

1986-87, Reporter of Illinois State Bar Association Committee on Professionalism.

1987-2000, Member of Consultant Group of American Law Institute's RESTATEMENT OF THE LAW GOVERNING LAWYERS.

1986-1994, Consultant, Administrative Conference of the United States (on various issues relating to conflicts of interest and legal ethics).

1989-1992, Member, Bar Admissions Committee of the Association of American Law Schools.

1990-1991, Member, Joint Illinois State Bar Association & Chicago Bar Association Committee on Professional Conduct.

1991-1997, Member, American Bar Association Standing Committee on Professional Discipline.

CHAIR, Subcommittee on Model Rules Review (1992-1997). [The subcommittee that I chaired drafted the MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT that the ABA House of Delegates approved on August 11, 1993.]

1992, Member, Illinois State Bar Association [ISBA] Special Committee on Professionalism; CHAIR, Subcommittee on Celebration of the Legal Profession.

Spring 1993, Constitutional Law Adviser, SUPREME NATIONAL COUNCIL OF CAMBODIA. I traveled to Cambodia and worked with officials of UNTAC (the United Nations Transitional Authority in Cambodia) and Cambodian political leaders, who were

charged with drafting a new Constitution to govern that nation after the United Nations troop withdrawal.

1994-1997, LIAISON, ABA Standing Committee on Ethics and Professional Responsibility.

1994-1996, Member, Illinois State Bar Association [ISBA] Standing Committee on the Attorney Registration and Disciplinary Commission.

Winter 1996, Constitutional Law Adviser, SUPREME CONSTITUTIONAL COURT OF MOLDOVA.

Under the auspices of the United States Agency for International Development, I consulted with the six-member Supreme Constitutional Court of Moldova in connection with that Court's efforts to create an independent judiciary. The Court came into existence on January 1, 1996.

Spring 1996, Consultant, CHAMBER OF ADVOCATES, of the CZECH REPUBLIC.

Under the auspices of the United States Agency for International Development, I spent the month of May 1996, in Prague, drafting Rules of Professional Responsibility for all lawyers in the Czech Republic. I also drafted the first Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the efforts of the Court to create an independent judiciary.

Consulted with (and traveled to) various countries on constitutional and judicial issues (*e.g.*, Romania, Moldova, Ukraine, Cambodia) in connection with their move to democracy.

1997-1999, Special Counsel, Office of Independent Counsel (Whitewater Investigation).

Lecturer on issues relating to Constitutional Law, Federalism, Nation-Building, and the Legal Profession, throughout the United States as well as Canada, Cambodia, Czech Republic, England, Italy, Mexico, Moldova, Romania, Scotland, Turkey, Ukraine, and Venezuela.

1998-2002, Member, ADVISORY COUNCIL TO ETHICS 2000, the ABA Commission considering revisions to the ABA Model Rules of Professional Conduct.

2000-2002, Member, ADVISORY BOARD TO THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS (This Board was charged with removing any remaining vestiges of organized crime to influence the Union, its officers, or its members.) This Board was part of "Project RISE" ("Respect, Integrity, Strength, Ethics").

2001-2008, Member, Editorial Board, CATO SUPREME COURT REVIEW.

2005-2006, Member of the Task Force on Judicial Functions of the Commission on Virginia Courts in the 21st Century: To Benefit All, to Exclude None

July, 2007, Riga, Latvia, International Judicial Conference hosted by the United States Embassy, the Supreme Court of Latvia, and the Latvian Ministry of Justice. I was one of the main speakers along with Justice Samuel Alito, the President of Latvia, the Prime Minister of Latvia, the Chief Justice of Latvia, and the Minister of Justice of Latvia

Since 1994, Member, Publications Board of the ABA Center for Professional Responsibility; vice chair, 1997-2001.

Since 1996, Member, Executive Committee of the Professional Responsibility, Legal Ethics & Legal Education Practice Group of the Federalist Society; Chair-elect, 1999; Chair, 2000

Since 2003, Member, Advisory Board, the Center for Judicial Process, an interdisciplinary research center (an interdisciplinary research center connected to Albany Law School studying courts and judges)

Since 2012, *Distinguished International Research Fellow* at the World Engagement Institute, a non-profit, multidisciplinary and academically-based non-governmental organization with the mission to facilitate professional global engagement for international development and poverty reduction, <http://www.weinstitute.org/fellows.html>

Since 2014, *Associate Editor* of the Editorial Board, THE INTERNATIONAL JOURNAL OF SUSTAINABLE HUMAN SECURITY (IJSHS), a peer-reviewed publication of the World Engagement Institute (WEI)

Since 2014, Member, Board of Directors of the Harvard Law School Association of Orange County

Since 2014, Member, Editorial Board of THE JOURNAL OF LEGAL EDUCATION (2014 to 2016).

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 18-BG-0100

IN RE LARRY KLAYMAN

A Member of the Bar of the
District of Columbia Court of Appeals
(Bar Registration No. 334581)

On Report and Recommendation of the
Board on Professional Responsibility
(BDN-48-08)

FILED 6/11/2020
District of Columbia
Court of Appeals
Julio A. Castillo
Julio Castillo
Clerk of Court

(Argued September 17, 2019)

Decided June 11, 2020)

Stephen A. Bogorad, with whom *John Thorpe Richards, Jr.*, was on the brief,
for respondent.

H. Clay Smith, III, Assistant Disciplinary Counsel, with whom *Elizabeth A. Herman*, Deputy Disciplinary Counsel, and *Jennifer P. Lyman*, Senior Assistant Disciplinary Counsel, were on the brief, for the Office of Disciplinary Counsel.

Before FISHER, THOMPSON, and BECKWITH, *Associate Judges*.

PER CURIAM: The Board on Professional Responsibility (the “Board”) has recommended that this court suspend respondent Larry Klayman from the practice of law for ninety days based on his representation of three clients in violation of Rule 1.9 (conflict-of-interest) of the District of Columbia Rules of Professional Conduct (or its Florida equivalent). In this matter, the Office of Disciplinary Counsel

(“Disciplinary Counsel”) takes exception to the Board’s report and recommendation on three grounds. First, Disciplinary Counsel challenges the Board’s rejection of the finding by Hearing Committee Number Nine (the “Hearing Committee”) that Mr. Klayman violated District of Columbia Rule of Professional Conduct 8.4(d). Second, Disciplinary Counsel takes exception to the Board’s rejection of the Hearing Committee’s finding that Mr. Klayman gave false testimony and made false representations to the Hearing Committee. Finally, Disciplinary Counsel takes exception to the Board’s recommendation that we impose a ninety-day suspension without a requirement that Mr. Klayman prove his fitness before being reinstated. For the reasons that follow, we accept the Board’s recommendations.

I.

The Board adopted most of the factual findings of the Hearing Committee, including as to the following, a summary regarding the three matters that underlie this disciplinary matter. Mr. Klayman founded Judicial Watch and served as its in-house general counsel from its inception in 1994 until 2003. During Mr. Klayman’s tenure at Judicial Watch, Sandra Cobas served as the director of Judicial Watch’s Miami Regional Office. She complained to Judicial Watch about her employment

conditions, alleging that she was subject to a hostile work environment during several weeks in 2003. As general counsel, Mr. Klayman provided legal advice to Judicial Watch concerning Cobas's claims. After both Mr. Klayman and Ms. Cobas had ended their employment with Judicial Watch, Ms. Cobas filed a complaint against Judicial Watch in a Florida state court, making the same hostile-work-environment allegations. The Florida trial court granted a motion to dismiss the case (calling the complaint "silly and vindictive"). Thereafter, without seeking consent from Judicial Watch, Mr. Klayman entered an appearance on Ms. Cobas's behalf and filed a motion requesting that the trial court vacate its order of dismissal. When the motion was denied, Mr. Klayman filed a notice of appeal on Ms. Cobas's behalf and, later, a brief in a Florida appellate court, but the appellate court affirmed the dismissal.

In 2002, while still employed by Judicial Watch, Mr. Klayman solicited a donation from Louise Benson as part of a campaign to raise funds to purchase a building for the organization. Klayman was acting as both chairman and general counsel of Judicial Watch when he solicited this donation from Benson. Ms. Benson committed to donate \$50,000 to the building fund, and thereafter paid \$15,000 towards that pledge. Judicial Watch did not purchase a building. In 2006, after Mr. Klayman had left Judicial Watch, he and Ms. Benson filed a lawsuit against Judicial

Watch in federal court, where they were represented by attorney Daniel Dugan. Ultimately, the federal district court dismissed Ms. Benson's claims (but not Mr. Klayman's claims) on jurisdictional grounds. Shortly thereafter, Ms. Benson sued Judicial Watch in the Superior Court of the District of Columbia, alleging *inter alia* unjust enrichment and seeking a return of her donation. Initially, she was represented in that suit by Mr. Dugan. Eventually, and without seeking consent from Judicial Watch, Mr. Klayman entered an appearance in the case as co-counsel for Ms. Benson. Judicial Watch requested that Klayman withdraw, stating that he organized the fundraising effort that was at the center of Ms. Benson's complaint while he was Judicial Watch's attorney, and noting that Ms. Benson had identified him as a fact witness. When Mr. Klayman did not withdraw, Judicial Watch moved to disqualify him. The motion for disqualification was never decided, as the parties stipulated to the dismissal of the case.

In 2001, while Mr. Klayman was still employed by Judicial Watch, Judicial Watch and Peter Paul entered into a representation agreement, and a modification thereto, under which Judicial Watch agreed to evaluate legal issues emanating from Mr. Paul's fundraising activities during the election campaign for the New York State Senate in 2000 and to represent him in connection with an investigation into alleged criminal securities law violations and possible civil litigation stemming from

those fundraising activities. Mr. Klayman drafted, edited, and approved the representation agreement and modification and authorized the signing of both documents as Judicial Watch's chairman and general counsel. Judicial Watch later represented Mr. Paul in a civil lawsuit brought in California state court. Following Mr. Klayman's departure from Judicial Watch, Judicial Watch withdrew from the representation. Thereafter, Mr. Paul sued Judicial Watch in the United States District Court for the District of Columbia alleging, among other theories, that Judicial Watch breached its representation agreement with him. While Mr. Paul initially was represented by Mr. Dugan, Mr. Klayman entered an appearance in the case without seeking Judicial Watch's consent. Judicial Watch moved to disqualify Mr. Klayman. The district court (the Honorable Royce Lamberth) granted the motion to disqualify, finding that Mr. Klayman's representation of Mr. Paul violated Rule 1.9. The court found that Mr. Klayman was representing the plaintiff "in a matter directly arising from an agreement he signed in his capacity as [g]eneral [c]ounsel for the current defendant" and that Mr. Klayman's representation of Mr. Paul was "the very type of 'changing of sides in the matter' forbidden by Rule 1.9."

The Hearing Committee found that Mr. Klayman violated Rule 1.9 (or its Florida equivalent) in all three matters and violated Rule 8.4(d) in the Paul matter. It also found that Mr. Klayman gave false testimony before the Hearing Committee

and that his disciplinary history in Florida in connection with an unrelated matter was another aggravating factor. On the basis of all the foregoing, the Hearing Committee recommended that Mr. Klayman be suspended for ninety days, with reinstatement contingent upon a showing of his fitness to practice law. The Board, by contrast, recommended that Klayman be suspended for ninety days with no fitness requirement. The Board disagreed with the Hearing Committee's finding that Disciplinary Counsel proved a violation of Rule 8.4(d) and with its finding that Mr. Klayman provided false testimony.

Before this court, neither Mr. Klayman nor Disciplinary Counsel takes issue with the finding that Mr. Klayman violated Rule 1.9 or its Florida equivalent in the matters described above, and we therefore need not address that finding. Rather, as the Board did, we adopt the vast majority of the Hearing Committee's thorough analysis. However, as noted above, Disciplinary Counsel takes exception to the Board's findings regarding Rule 8.4(d) and false testimony, and to the Board's recommended sanction insofar as it omits a fitness requirement. We discuss these matters below.

II.

Disciplinary Counsel has the burden of proving a violation of the Rules of Professional Conduct by clear and convincing evidence. *In re Speights*, 173 A.3d 96, 99 n.3 (D.C. 2017). “When reviewing a recommended disciplinary sanction against an attorney, this court must accept the Board’s findings of fact if they are supported by substantial evidence.” *In re Sneed*, 673 A.2d 591, 593 (D.C. 1996). The Board “has the power to make its own factual findings” but “must accept the Hearing Committee’s evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record.” *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (internal quotation marks and emphasis omitted). “Substantial evidence means enough evidence for a reasonable mind to find sufficient to support the conclusion reached.” *In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990). “[T]he Board and this court owe no deference to the Hearing Committee’s determination of ‘ultimate facts,’ which are really conclusions of law and thus are reviewed *de novo*.” *Bradley*, 70 A.3d at 1194. “Whether [a] respondent gave sanctionable false testimony before the Hearing Committee is a question of ultimate legal fact that the Board and this court review *de novo*.” *Id.* “[T]his court usually adopts the Board’s recommended sanction ‘unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted[.]’” *Sneed*, 673 A.2d at 593.

III.

Rule 8.4(d) establishes that it is professional misconduct for a lawyer to “[e]ngage in conduct that seriously interferes with the administration of justice[.]” *Id.* For conduct to violate Rule 8.4(d), the conduct must be improper, “bear directly upon the judicial process,” and “taint the judicial process in more than a *de minimis* way.” *In re Carter*, 11 A.3d 1219, 1224 (D.C. 2011) (internal quotation marks omitted).

Disciplinary Counsel asserts that the “Board erred by overturning the Hearing Committee’s conclusion that Mr. Klayman violated Rule 8.4(d) when he appeared on behalf of [Mr.] Paul with a ‘clear conflict of interest’ and litigated against disqualification for the second time.” The Board cited a number of reasons for rejecting the Hearing Committee’s conclusion, including its longstanding “concern[] about the scope of Rule 8.4(d) in litigation-related disciplinary matters” and its view that any Rule 8.4(d) violation would be “derivative of the conflict[-]of[-]interest finding.” But the Board primarily followed this court’s lead in considering the views of the judge who presided over the litigation in which the disqualification motion was filed. *See In re White*, 11 A.3d 1226, 1232 (D.C. 2011). The Board found it “extra significan[t]” that Judge Lamberth, though he granted the motion to disqualify

Mr. Klayman, found “a legitimate debate about [Mr. Klayman’s] conduct” and further found that Mr. Paul was a needy client who could not otherwise have afforded legal services. In light of the “extraordinary situation” of Judge Lamberth’s “supportive testimony” to the Hearing Committee, the Board was unable to conclude that Mr. Klayman’s “behavior sufficiently tainted the judicial process to a degree adequate to sustain the Rule 8.4(d) charge.”¹ We accept the Board’s reasoning and agree that no Rule 8.4(d) violation was proven by clear and convincing evidence.

IV.

Before the Hearing Committee, Mr. Klayman testified, “I believed that Mr. Dug[an] had given the advice of counsel that I could do this [i.e., represent Ms. Benson], otherwise he [Dugan] wouldn’t have prepared the pleading” opposing the motion to disqualify Mr. Klayman based on Rule 1.9.” The Hearing Committee found that this testimony was false, as was Mr. Klayman’s testimony that Mr. Dugan “was the one who prepared the response to that disqualification motion.”

¹ The Board noted that in *White*, by contrast, Judge Lamberth concluded that White’s conduct had tainted the proceedings; specifically, “[t]he entire litigation was disrupted and delayed while the [d]istrict [c]ourt dealt with the motion to disqualify[,]” and the court had to strike an entire deposition because of White’s presence. *Id.* at 1232.

Disciplinary Counsel contends that this court should defer to the Hearing Committee's false-testimony findings as supported by substantial record evidence.

The Board found that Disciplinary Counsel failed to prove by clear and convincing evidence that Mr. Klayman gave false testimony. The Board observed that the Hearing Committee had relied almost entirely on Mr. Dugan's testimony that he did not endorse Mr. Klayman's appearance in the Benson matter. The Board reasoned, however, that the forcefulness of Mr. Dugan's testimony was undercut by his repeated inability to recall the substance of key conversations that took place between him and Mr. Klayman eight years earlier. In addition, the Board cited prior, "apparently inconsistent" statements that Mr. Dugan had made about the matter (e.g., Mr. Dugan's apparent statement to Judicial Watch's counsel, referred to in Judicial Watch's memorandum in support of its motion to disqualify, that there was "no ethical issue arising from" Mr. Klayman's representation of Ms. Benson).

The Board's description of Mr. Dugan's "diminished recollection" of his discussions with Mr. Klayman about the latter's entry of his appearance in the Benson matter, and about Judicial Watch's demand that Mr. Klayman withdraw from the representation, is supported by the record. Further, while the Hearing Committee reasoned that Mr. Klayman "cannot have inferred" that Mr. Dugan

blessed his entry of appearance in the Benson matter from Mr. Dugan's filing of the opposition to the motion to disqualify since Mr. Dugan "did not write the opposition[,]" Mr. Dugan acknowledged that his associate may have edited the draft opposition before it was filed, acknowledged that he (Dugan) did *sign* the opposition, and testified that he would not have done so if he had thought that it was frivolous or thought it violated any ethics or pleadings rules. Additionally, Mr. Klayman's testimony was to the effect that the circumstances caused him to *believe* that Mr. Dugan had given the advice of counsel. We agree with the Board that there was not proof by clear and convincing evidence that Mr. Klayman testified dishonestly as to his belief and recollection. Accordingly, we accept the Board's conclusion rejecting the finding that Mr. Klayman testified falsely.

V.

In explaining its sanction recommendation, the Hearing Committee found that Mr. Klayman's misconduct was aggravated by his prior discipline in Florida and his denial of responsibility as to the underlying conduct. He received a public reprimand in that jurisdiction after he failed to timely pay the full amount (\$5,000) he had agreed to repay to a former client after mediation to resolve a fee dispute. The Board gave this matter little weight because of Mr. Klayman's explanation that a serious

car accident had rendered him unable to work at full capacity and caused him “significant financial difficulties” that affected his ability to pay. We accept that evaluation.

We also accept the Board’s conclusion that Disciplinary Counsel did not show that a fitness requirement is warranted in this case. To be sure, Disciplinary Counsel proved that Mr. Klayman flagrantly violated Rule 1.9 on three occasions. His misconduct was not isolated, and, it appears, he acted vindictively and “motivated by animus toward Judicial Watch” (with which he had developed an acrimonious relationship). We agree with the Board and the Hearing Committee that his misconduct was intentional rather than inadvertent or innocent. We also readily agree with the Board that his misconduct — involving a “switch[ing of] sides” that strikes at the integrity of the legal profession — deserves the serious sanction of a ninety-day suspension. Nevertheless, we are not left with “[s]erious doubt” or “real skepticism” that Mr. Klayman can practice ethically. *In re Adams*, 191 A.3d 1114, 1120 (D.C. 2018). Accordingly, we decline to impose a fitness requirement. We do, however, concur with Disciplinary Counsel’s original recommendation that Mr. Klayman be ordered to complete a continuing legal education (“CLE”) course on conflicts of interest.

Wherefore, effective thirty days after entry of this order, Mr. Klayman is suspended from the practice of law. The period of suspension is ninety days, commencing after he has filed the affidavit required by D.C. Bar R. XI, § 14(g). Before reinstatement, he must also complete a CLE course on conflicts of interest.²

So ordered.

² The pending motion by his counsel to withdraw is hereby granted.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

LARRY ELLIOT KLAYMAN,

Respondent.

_____ /

Supreme Court Case
No. SC11-247

The Florida Bar File
No. 2011-70,621(11A)

CONSENT JUDGMENT

Larry Elliot Klayman, Respondent, having been fully advised of his procedural rights under the Rules Regulating The Florida Bar, hereby tenders this Consent Judgment pursuant to Rule 3-7.9(b), Rules of Discipline, and says:

1. Respondent, Larry Elliot Klayman, is and was at all times hereinafter mentioned, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. Respondent is currently the subject of a grievance file, which has been assigned The Florida Bar File No. 2011-70,621(11A).

3. Respondent admits that the following facts are true and accurate and stipulates:

A. On or about November 11, 2007, Natalia Humm ("Humm")

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filed a grievance against Respondent alleging that he had failed to provide services in her criminal case after she paid him a \$25,000 retainer.

B. The parties ultimately agreed to submit this matter to The Florida Bar Grievance Mediation Program, and a Mediation Agreement was signed on February 3, 2009. According to the terms of the Mediation Agreement, Respondent agreed to pay Humm \$5,000 within ninety (90) days from the date of the Agreement.

C. On or about June 3, 2009, Jonathan I. Rotstein ("Rotstein"), the attorney who represented Humm in the mediation, sent a letter to The Florida Bar indicating that Respondent had failed to comply with the terms of the Mediation Agreement and further indicating that he did not think Respondent had "any intentions of honoring same."

D. On or about June 11, 2009, The Florida Bar forwarded Rotstein's letter to Respondent, requesting his response within seven (7) days from the date of The Bar's letter.

E. In response to The Florida Bar, Respondent indicated that he was facing a very difficult financial situation, but that he had every intention of honoring his agreement with Humm. Respondent further indicated that he would be able to pay the outstanding amount by September 30, 2009.

F. Respondent did not provide his payment by September 30,

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2009, and therefore, on or about October 22, 2009, The Florida Bar sent him a follow-up letter advising him that failure to comply with the terms of the Mediation Agreement was a violation of Rule 14-5.1(b) of the Rules Regulating The Florida Bar and giving him a final deadline of November 20, 2009 to comply.

G. Respondent again did not to comply with the Mediation Agreement, and therefore, on December 4, 2009, The Florida Bar sent him a letter advising him that a new file had been opened on the basis of his failure to comply with the terms of the Mediation Agreement, which would be considered by the grievance committee.

H. Immediately prior to the grievance committee's meeting, Respondent submitted a response where he indicated that he had been unable to comply with the Mediation Agreement for financial reasons and that he was actually in the process of filing for bankruptcy. Nevertheless, Respondent advised that he still intended to honor the Agreement.

I. Prior to making its final determination, the grievance committee requested that Respondent provide specific evidence of his financial situation, in affidavit form. Respondent provided a supplemental response, which included the financial information requested. In addition, Respondent enclosed a check in the amount of \$1,000, payable to Humm, and made a promise to continue making

good faith payments of at least \$500 per month until the entire \$5,000 was paid in full.

J. Based on Respondent's payment of \$1,000, the financial information provided, and his assurances that he would continue making monthly good faith payments to Humm, the grievance committee ultimately determined that the matter should be closed with a finding of no probable cause and a letter of advice to Respondent.

K. Respondent made two additional payment of \$500 each, but did not make any additional payments at that time because of his claimed continued financial distress.

L. Rotstein sent letters to The Florida Bar on May 12, August 18, and December 14, 2010 requesting its assistance in obtaining the outstanding payments from Respondent. The Florida Bar forwarded those letters to Respondent, who initially responded and promised to continue making payments.

M. Respondent's next communication with The Bar was on August 23, 2010, when he indicated that he had been in a serious auto accident and that he continued to suffer financial distress, but promised that he would be sending an additional payment to Humm. Respondent moved during the interim period and he claims that he did not timely receive certain correspondence from The Bar, which

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ultimately led to a probable cause finding and the filing of a formal complaint with the Florida Supreme Court.

N. On or about March 9, 2011, after a formal complaint had been filed with the Florida Supreme Court in this matter, and after he received the correspondence referenced in paragraph M above, Respondent contacted The Bar to advise that he would accept the offer to reach a resolution of this matter. Respondent further advised that he was now in a position to make the outstanding payment in the amount of \$3,000 to Humm, and he immediately made such payment, in full satisfaction of his outstanding obligation under the Mediation Agreement.

4. Respondent admits that by reason of the foregoing facts, he has violated Rules 3-4.3 (misconduct and minor misconduct), 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct), 4-8.4(g) (failure to respond to The Florida Bar), and 14-5.1(b) (effect of respondent's failure to attend or comply with mediation) of the Rules Regulating The Florida Bar.

5. Pursuant to Rule 3-7.9(b) of the Rules Regulating The Florida Bar, Respondent hereby tenders a Consent Judgment wherein Respondent agrees to the following discipline:

A. Public Reprimand, to be administered by publication.

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6. Respondent submits that the following factors apply in mitigation:

- 9.32(a) (absence of prior disciplinary record) – Respondent has been continuously a member of The Florida Bar in good standing for nearly thirty-five (35) years.
- 9.32(c) (personal or emotional problems) – Respondent maintains that since the time the Mediation Agreement was entered into he has sustained significant financial distress, which prevented him from making timely payments to Humm and from providing timely responses to The Florida Bar. Respondent further maintains that he agreed to submit Humm's claim to mediation and agreed to the terms of the Mediation Agreement simply to save valuable time and resources for all concerned. Respondent had agreed to represent Humm in a criminal proceeding, but she subsequently decided to retain new counsel when the case was transferred from Miami to Orlando federal court. Respondent maintains that Humm was never entitled to any refund and further asserts that Humm's subsequent counsel admitted as much in an e-mail he sent to Respondent, where he stated, "[i]t is unlikely that (you) would want to refund a cent so please provide me with an explanation so that I may pass it along to Ms. Humm." Respondent also maintains that Humm had similarly asked her prior counsel for a refund and even requested that Respondent sue him, which Respondent refused to do. Respondent thus claims a pattern in Humm's

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behavior toward counsel. Nevertheless, in an effort to promptly resolve the claim and to save valuable time and resources, Respondent ultimately agreed to the terms of the Mediation Agreement, as the mediator had urged.

With respect to his failure to provide timely responses to The Bar, Respondent submits that he did not timely receive correspondence from The Bar, as his address had changed and he inadvertently did not immediately change the address with The Florida Bar. As a result, Respondent claims he did not timely receive notice that the Grievance Committee had made a probable cause finding or that a formal complaint had been filed in this matter, and consequently, that he did not have a timely opportunity to argue against the probable cause finding or to resolve this matter prior to a formal complaint being filed. Respondent acknowledges that he should have provided his new address to The Bar, but inadvertently forgot to do so in time for the referenced correspondence to arrive timely.

- 9.32(g) (character or reputation) – Respondent has been a respected member of The Bar for nearly thirty-five (35) years.
- 9.32(l) (remorse) – Respondent is remorseful for his delay in satisfying the terms of the Mediation Agreement, which ultimately led to the filing of a formal complaint in this matter. Moreover, Respondent has now fully satisfied

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his outstanding obligation to Humm and made such payment without conditioning it on any consent judgment.

7. Respondent agrees to pay all costs reasonably incurred by The Florida Bar in the investigation of the aforesaid matter within thirty (30) days of the entry of the Supreme Court's final order, plus interest at the prevailing statutory rate to accrue on all costs not paid within said time, unless time for payment is extended by the Board of Governors.

8. Respondent agrees that the costs indicated below have been incurred.

Administrative fee	
Rule 3-7.6(o)(1)(I)	\$ <u>1,250.00</u>
TOTAL:	\$ 1,250.00

9. Respondent agrees that he will not attempt to discharge the restitution to the client, nor the obligation for the payment of the Bar's costs in any future proceedings, including but not limited to, a Petition for Bankruptcy.

10. Respondent recognizes that the disciplinary sanction to be imposed will ultimately be determined by the Supreme Court of Florida which will not be bound to follow the recommendation of The Florida Bar, the Board of Governors, or the Referee in these proceedings.

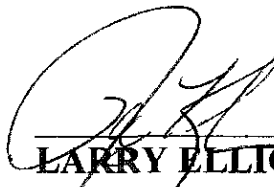
11. Respondent agrees that this Consent Judgment and every factual admission contained herein, and specifically the admissions set forth in paragraph three (3) shall have full force and effect regardless of any subsequent

recommendation or action taken with respect to the terms of discipline offered by Respondent pursuant to this Consent Judgment.

12. Respondent agrees that in the event that the terms of discipline offered herein are not approved by the Board of Governors of The Florida Bar (or their designee), the Referee, then this matter shall proceed accordingly in the ordinary course.

13. Respondent acknowledges that this document is tendered freely, voluntarily and without fear, threat or coercion.

DATED this 14th day of July, 2011.



LARRY ELLIOT KLAYMAN

Respondent

Florida Bar No. 246220

2000 Pennsylvania Avenue, No. 345

Washington, DC 20006

(310) 595-0800



DANIELA ROSETTE

Bar Counsel

Florida Bar No. 64059

The Florida Bar

444 Brickell Avenue, Ste M-100

Miami, Florida 33131

(305) 377-4445

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Supreme Court of Florida

MONDAY, AUGUST 29, 2011

CASE NO.: SC11-247

Lower Tribunal No(s): 2011-70,621(11A)

THE FLORIDA BAR

vs. LARRY ELLIOT KLAYMAN

Complainant(s)

Respondent(s)

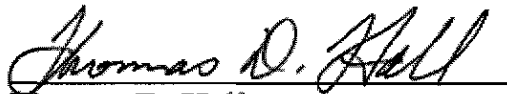
The Court approves the uncontested referee's report and reprimands respondent.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Larry Elliot Klayman in the amount of \$1,250.00, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined.

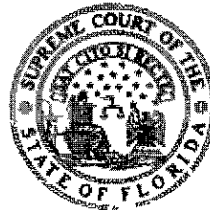
A True Copy

Test:



Thomas D. Hall

Clerk, Supreme Court



bhp

Served:

KENNETH LAWRENCE MARVIN

DANIELA ROSETTE

LARRY ELLIOT KLAYMAN

HON. VICTORIA DEL PINO, JUDGE

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